

Public procurement and inter-provin



hosted by Dave Newman

Sit down, take a deep breath, sip a beverage, open your mind and stay awhile while we chat with:



Honourable Guy Boutilier
Minister of International, Intergovernmental and Aboriginal Relations, Alberta



Honourable Colin Hansen
Minister of Economic Development
British Columbia

Perhaps, it's because we are largely a nation of relative newcomers – or – perhaps it is because such a large proportion of our economic activity is trade – or – perhaps it is because we are a nation of bureaucrats, accountants and would be class presidents. Whatever you choose, the fact is that Canadians pay an inordinate amount of attention to trade agreements. We have multilaterals, trilaterals, bilaterals and unilaterals, *WTO*, *NAFTA*, *AIT*, and now, *TILMA*: the *Trade, Investment and Labour Mobility Agreement*, signed in April 2006 by Alberta and British Columbia. The agreement started to come into effect in April 2007.

Inevitably, trade and labour agreements have important implications for public procurement and, often, impacts that go well beyond the levels for bidding competition

requirements. Interestingly, they have thought of that in *TILMA*. Even more interesting is the fact that Alberta and BC negotiated *TILMA*, a refinement of the *AIT* process, with the clear intention to invite other provinces and territories to sign on.

Summit had the opportunity to engage the two provincial ministers responsible for the agreement to address not only what they are doing but what it means for public procurement specialists. So, let's chat!

The wherefore and the why

Boutilier: On April 1, 2007, Alberta and British Columbia opened up their procurement to a wider array of opportunities for suppliers in the two provinces. Procurement elements in *TILMA* include lower thresholds requiring the Alberta and BC governments to openly compete through a tender process. This means that businesses now have access to goods and services contracts that were not always available previously. *TILMA*'s rules are simplified from the Agreement on Internal Trade (*AIT*). *TILMA* only requires that procurements covered by it be open (transparent) and non-discriminatory.

Hansen: *TILMA* is really an extension of the *AIT* under the provision that permits any parties to enter into bi-jurisdiction or multi-jurisdiction agreements within the spirit and principles of the *AIT*. There has now been over a decade of talk about the need to strengthen the *AIT* and expand its scope. Some say there are more barriers to inter-provincial economic activity in Canada than among the 12 core countries in the European Union across their international boundaries. Gary Mar, the Alberta Minister who signed the agreement with me a year and a half ago, observed that "after all was said and done, more was said than done," summing up the lack of progress around the *AIT*. It was largely out of that frustration that BC and Alberta started talking about the need to show leadership in Canada and get on with it. The Conference Board did a study on inter-provincial barriers about a year ago and its title, *Death by a Thousand Paper Cuts*, pretty well sums up what *TILMA* meant to address.

You agreed to buy what?

Hansen: The procurement section of the agreement sets up a more competitive environment wherein taxpayers will get better value for their tax dollars. A company registered in BC and wanting to do business in Alberta will not have to go through the process of registering in Alberta. Under *TILMA*, they will already be deemed to be registered, whereas a similar company from Saskatchewan would not. Thresholds have been changed under *TILMA* for open tendering requirements. The levels bring down the thresholds for the purchase of certain commodities. For the purchase of goods, for example, anything over \$10,000 must go to open tender. That is set at \$75,000 for services and \$100,000 for construction projects. Procurement documents must also be posted in the electronic tendering system with sufficient time for bidders to prepare and submit their bids.

Boutilier: *TILMA* will result in more opportunities and provide more transparency, accountability and integrity in the contract process. Most professional services that are excluded from the rules of the *AIT* are covered by *TILMA*. For example, accounting and veterinary services are covered under *TILMA* and by 2009, so will engineering services. Of particular significance is that *TILMA* now also covers contracts for advertising and public relations services, which most jurisdictions in Canada have been reluctant to include under the disciplines of the *AIT*.

Nuts and bolts can avoid using screws

Boutilier: *TILMA* procurement provisions are less prescriptive than those in the *AIT*. There's latitude for initiatives like consortium buying, prequalification, ethical and green procurement strategies and P3 arrangements. *TILMA* requires Alberta and BC to improve supplier access to both the Alberta Purchasing Connection and BC Bid electronic tendering sites. The objective is to provide Alberta and BC companies with more seamless access to the two systems and provide them the advantage of receiving more timely information on contract

Financial trade agreements

opportunities. Under the agreement, both governments can outline certain specifications or requirements, so long as it is done in a non-biased fashion, open to all who are qualified.

The effect of *TILMA* on the MASH sector in Alberta has yet to be determined as we continue with our province-wide consultation process. Following that, Alberta and BC will negotiate the MASH sector provisions and implement them by April 1, 2009. One of the main objectives of *TILMA* was to further liberalize commerce between Alberta and BC, so we will want to determine how this can be accomplished in the MASH sector.

Hansen: Software has made a big difference in public procurement. If an organization is still using procurement procedures from 13 years ago, when the AIT came in, they are already spending way too much time on administration. Any set-aside under *TILMA* would have to be made for a legitimate reason. There is a provision for local economic development as a legitimate objective in the agreement, but it also requires that procurement above the threshold levels be subject to open competition. There are specific exemptions for First Nations. For example with some of the pre-Olympic highway construction in BC, some contractors have been encouraged to recruit First Nations companies to achieve certain elements. In the Sea to Sky Highway construction, contracts to do logging and forestry have gone to First Nations companies without tender, a specific exemption under *TILMA*. There are also provisions under *TILMA* related to environmental objectives.

Municipalities already have restrictions on how they can do business under the Agreement on Internal Trade, so those who say the province should butt out of municipal procurement are way off base. *TILMA* applies the same principle as the AIT. As well, municipalities have transi-

tion time as *TILMA* does not come into effect for them until 2009.

Who's driving this bus and where's it going next?

Hansen: It was envisioned from the beginning that BC and Alberta would negotiate this agreement but design *TILMA* specifically so other provinces and territories could sign on. We've had active discussions with other provinces and several are very interested. We have offered up our staff to provide briefings to other provinces. Saskatchewan, Ontario and a few others are actively kicking the tires. *TILMA* is designed to be inclusive, not to put BC and Alberta up against the other provinces. But, in the absence of other provinces signing on to *TILMA*, they are going to feel the competitive pressures.

Boutilier: During the two-year transitional period of *TILMA* implementation, Alberta and BC will establish an enforceable dispute settlement mechanism for any potential procurement complaints under the agreement. That dispute resolution process will have the teeth that the AIT is lacking. Although suppliers in other parts of Canada may have an opportunity to access Alberta and BC government tenders covered by *TILMA*, they would not have recourse to any future dispute settlement mechanism if those procurements are only covered by AIT and not by *TILMA*, unless they eventually sign on. Alberta and BC could also choose to limit procurements covered by *TILMA*, and not AIT, to suppliers in our two provinces.

Next chatroom
Discussion on
Ontario Buys
program